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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE OTIS D. WRIGHT
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

United States of America,)
PLAINTIFF,)
VS.) NO. CR 10-351 ODW ODW
Carlos Rivera, Jessica Medina, Raul)
Prieto,)
DEFENDANT,)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, MARCH 11, 2013

KATIE E. THIBODEAUX, CSR 9858
U.S. Official Court Reporter
312 North Spring Street, #436
Los Angeles, California 90012

1 APPEARANCES OF COUNSEL:

2

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1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 11, 2013

2 10:11 A.M.

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6 THE CLERK: Calling Item No. 1, CR 10-351, ODW,
7 United States of America versus Carlos Rivera.

8 Counsel, please state your appearances.

9 MS. EL-AMAMY: Morning, Reema El-Amamy and Michael
10 Dore on behalf of the United States.

11 THE COURT: Good morning, counsel.

12 MR. NAVARRO: Morning, your Honor. Angel Navarro
13 with Carlos Rivera. He is standing to my left.

14 THE COURT: Mr. Navarro, Mr. Rivera. Gentlemen,
15 please, be seated.

16 All right. We are here for the sentencing in
17 this matter. On December 12th of 2012, Mr. Rivera was
18 found guilty by a jury following trial on Counts 1, 2, 5,
19 6, 10 and 23 of the 30-count indictment.

20 Count 1 charges a violation of Title 18,
21 United States Code, Section 1962(d), as in David,
22 Racketeer Influenced and Corrupt Organizations
23 Conspiracy. Specifically, on a date unknown and
24 continuing to April 7 of 2010, Rivera and others being
25 employed by and associated with the Black Angels criminal

1 enterprise conspired to conduct and participate directly
2 and indirectly in the conduct of the affairs of the
3 enterprise through a pattern of racketeering activity
4 consisting of multiple acts involving extortion,
5 distribution of controlled substances and conspiracy to
6 distribute controlled substances.

7 Count 2 charges a violation of Title 18,
8 United States Code Section 1962(c), Racketeer Influenced
9 and Corrupt Organizations, specifically, on a date
10 unknown, and continuing to April 7, 2010, Rivera and
11 others being employed by and associated with the Black
12 Angels criminal enterprise conducted and participated
13 directly and indirectly in the conduct of the affairs of
14 the enterprise through a pattern of racketeering activity
15 consisting of multiple acts involving extortion,
16 distribution of controlled substances and conspiracy to
17 distribute controlled substances.

18 Count 5 charges a violation of Title 21,
19 United States Code, Section 846, conspiracy to distribute
20 and to possess with intent to distribute methamphetamine
21 and heroin. Specifically, beginning on an unknown date
22 and continuing to on or about April 7, 2010, Rivera and
23 others violated Title 21, United States Code, Section 846
24 by conspiring to commit the following offenses:

25 One, to distribute at least 50-grams of

1 methamphetamine or at least 500-grams of a mixture or
2 substance containing methamphetamine in violation of
3 Title 21, United States Code, Sections 841(a)(1) and
4 841(b)(1)(A)(viii).

5 Two, to distribute at least 5-grams of
6 methamphetamine or at least 50-grams of a mixture or
7 substance containing methamphetamine, a schedule
8 two controlled substance in violation of Title 21, United
9 States Code, Section 841(a)(1) and 841(b)(1)(B)(viii).

10 And, third, to distribute at least 100-grams
11 of a mixture or substance containing a detectable amount
12 of heroin, a Schedule 1 narcotic drug controlled
13 substance. This is in violation of Title 21, United
14 States Code, Section 841(a)(1) and 841(b)(1)(B)(i).

15 Count 6 charges a violation of Title 21,
16 United States Code, Section 841(a)(1) and (b)(1)(C),
17 distribution of methamphetamine. Specifically, on
18 July 31, 2009, Rivera distributed approximately 4.4-grams
19 of methamphetamine.

20 Count 10 charges a violation of Title 21,
21 United States Code, Section 841(a)(1) and
22 841(b)(1)(A)(viii), possession with intent to distribute
23 methamphetamine. Specifically, on August 6, 2009, Rivera
24 possessed with intent to distribute approximately
25 219-grams of methamphetamine.

Count 23 charges a violation of Title 18, United States Code, Section 922(g)(1), felon in possession of a firearm. Specifically, on July 22nd, 2009, Rivera knowingly possessed a revolver and ammunition in and affecting interstate and foreign commerce. Such possession occurred after Rivera had been convicted of 245PC, assault with a deadly weapon, San Bernardino County Superior Court Case No. FWV800678 on or about April 25th, 2008, an offense punishable by imposition of a term of imprisonment for a period exceeding one year.

The drug offenses, that is Counts 1, 2, 5, 6 and 10 carry a base offense level, and this is pursuant to U.S. Sentencing Guidelines, Section 2D1.1C3. There are no adjustments. Based upon nine criminal history points, Mr. Rivera falls within criminal history category 4. This, then, results in a recommended sentencing range of 210 to 262 months.

The separate offense, Count 23, the weapons offense, carries a base offense level of 20. This, then, results in a recommended sentencing range of 51 to 63 months.

Before we get to the recommendations, are there any objections to the method or outcome of the computations of the arriving at the recommended or

1 guideline sentencing range? Government?

2 MS. EL-AMAMY: No, your Honor.

3 THE COURT: Mr. Navarro?

4 MR. NAVARRO: No, your Honor.

5 THE COURT: All right. Now, let's move on now to
6 the recommendations. Probation has in its report which
7 was disclosed on February 11th of 2013 -- by the way,
8 Mr. Rivera, have you seen the presentence investigation
9 report prepared by probation?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. In that report, probation
12 recommends a sentence of 180 months on Counts 1, 2, 5, 6
13 and 10, and 120 months on Count 23, all to run
14 concurrently. Probation officer recommends five years of
15 supervised release on the drug offenses and three years
16 of supervised release on the weapons offense all to run
17 concurrently.

18 The defendant's position is a recommendation
19 of no more than 144 months, the 500-hour residential drug
20 treatment program run by the Bureau of Prisons and a
21 Southern California placement.

22 I will just say now that the court is making
23 the recommendation for the Southern California placement
24 and the 500-hour RDAP.

25 The government's position is 210 months plus

1 five years of supervised release, and, of course, the
2 statutory assessment of \$600. The court's tentative
3 position at this time is to impose a sentence on the
4 five drug offenses of 236 months, all to run
5 concurrently, and a 57 month term of imprisonment on
6 Count 23, the weapons offense to run concurrently with
7 the sentence imposed on the drug offenses. The court is
8 also inclined to impose a term of five years of
9 supervised release on the drug offenses and three years
10 of supervised release on the weapons offense, all to run
11 concurrently.

12 All right. With that said, the court has read
13 the sentencing position papers filed by the government as
14 well as the sentencing position papers filed on behalf of
15 Mr. Rivera, and there was also an additional letter that
16 was submitted on Mr. Rivera's behalf. The court has read
17 that as well.

18 I might as well say for the record Velia
19 Prieto, Mr. Prieto's mother has written a letter to the
20 court.

21 All right. With that said, is there anything
22 that the government would like to add?

23 MS. EL-AMAMY: Not at this time.

24 THE COURT: All right. Mr. Navarro?

25 MR. NAVARRO: Yes, your Honor.

1 Good morning, your Honor.

2 THE COURT: Good morning, sir.

3 MR. NAVARRO: I want to start off by telling you a
4 true story. It is a personal story, your Honor.

5 THE COURT: Okay.

6 MR. NAVARRO: When I was about 11 years old, I was
7 raised in east Los Angeles, and I had a lot of friends
8 who were not necessarily in gangs but wanted to join
9 gangs. And some of these friends were close friends of
10 mine. So one day I had the brilliant idea of dressing
11 like a gang member, and it gave me a lot of respect in my
12 school at Ford Boulevard Elementary. The kids didn't
13 bother me. I wasn't bullied. I had some friends who
14 were my homeys, and we were not jumped into any gang but
15 that was the plan.

16 And I went home that day. My father came home
17 from driving his truck because he is a truck driver to
18 this day for Von's and he saw me dressed, how I was
19 dressed with my Pendleton shirt and my clean clothes and
20 my khaki pants and he took me out to the backyard. We
21 had a pool table, and he told me to stand right there,
22 son. And I stood there, and he got a pool stick, and he
23 broke it over my back. That was the only time my father
24 ever hit me. And it left an impression on me. And he
25 said to me, son, if you dress like that tomorrow, I will

1 do it again.

2 So I went to school the next day. I was not
3 dressed like a gang member, and I stopped hanging out
4 with those kids because I could not take my father
5 beating me up every day. And he was trying to make a
6 point to me, and the point -- I was a pretty smart kid --
7 and I got it.

8 Now, Mr. Rivera never had that. Mr. Rivera
9 like a lot of my other clients never had a father because
10 my mother was clueless about what I was doing. And I see
11 this over and over.

12 THE COURT: Let me interrupt you. I could be
13 wrong, but what I read indicates that Mr. Rivera's father
14 didn't leave the household until Mr. R was 18.

15 MR. NAVARRO: Well, your Honor, my understanding
16 is that he may not have left the household until he was
17 18, but he clearly wasn't a father to those children
18 because if you are a father to your children, you are not
19 going to let your children join gangs. By the time my
20 client was 18 years old, two of his older siblings were
21 in prison already.

22 THE COURT: Didn't we have testimony in this trial
23 from his mother?

24 MR. NAVARRO: She is not his mother, your Honor.
25 She is Mr. Prieto's mother.

1 THE COURT: Okay.

2 MR. NAVARRO: And she has done everything she
3 could to be a surrogate mother to my client, and he
4 appreciates it and obviously we appreciate it as well.
5 But the fact remains, your Honor, that Mr. Rivera grew up
6 in an environment where, in a sense, you know, it was
7 expected that he would join the gang. It is unfortunate.
8 In my family, we didn't have any gang members, and my
9 father wasn't going to allow any gang members.

10 THE COURT: Why was it expected that he would join
11 a gang? Is every teenager in Ontario part of the Black
12 Angels?

13 MR. NAVARRO: Of course not.

14 THE COURT: Why was it expected that he would join
15 the gang?

16 MR. NAVARRO: Of course not. Not every one of my
17 friends growing up in East Los Angeles became a gang
18 member. But it is also clear, your Honor, at least from
19 my experience, that when I see young men join gangs, they
20 don't come from two parent homes. They sometimes do.
21 But the reality is they don't. Most of the time, they
22 have older siblings who have become members of the gang,
23 and you look up to your siblings just like I looked up to
24 my brother and my sister. And you want to be like them.
25 And not just the siblings, but the friends who are, the

1 friends that are siblings become, in essence, defacto
2 brothers and sisters to you. And that happens.

3 I think it is Father Boyle -- I don't know if
4 you know Father Boyle.

5 THE COURT: I do indeed.

6 MR. NAVARRO: He says no one joins the gang with
7 the hope of something good coming out of it. I don't
8 think people do that. I am not an expert in this, but
9 having personal experience and being a lawyer for many
10 years, I see patterns. You see patterns over and over
11 again.

12 And the point I am trying to make to you is
13 that I am not excusing what Mr. Rivera has done. He is a
14 grown man now. He has made his choices, and he has to
15 live with those consequences. But at the same time, I
16 think we have to step back sometimes and think about who
17 we are sentencing, what kind of environment did he grow
18 up in. I assume, I don't know much about your
19 background. Maybe it is similar, maybe it is not. But I
20 know I grew up in a very similar environment with a lot
21 of single parent homes, et cetera.

22 And, whatever, but the point is that
23 Mr. Rivera, your Honor, from a very young age was around
24 people who were not necessarily positive influences in
25 his life. And he has made choices. I believe it is

1 noted in the probation report the longest prison term he
2 ever served has about been two years. So if you give him
3 19 years and eight months, I don't think that is
4 necessary.

5 I think you can serve the same purpose by
6 giving him 12-and-a-half years and supervising him for
7 five years afterwards.

8 He has four children. He hasn't been the
9 father, I think, that he should be for those children,
10 and if he is sent away for almost 20 years that is never
11 going to happen. And you are also going to sentence his
12 wife, and that will be for another day. But the fact is,
13 your Honor, I don't believe you have to give someone that
14 much jail time. And I have also looked at my client's
15 conduct in this case.

16 He was out on the streets for a few months,
17 your Honor, just a few months. And during those few
18 months, he managed to sell narcotics. He obtained a
19 weapon. I don't think those things were ever denied.
20 The evidence spoke for itself during the trial. And due
21 to a number of circumstances, my client went to trial,
22 and now he is before you. And we are simply asking you
23 to reconsider, to look at him as a young man, he is not
24 even 30 years old, who does have some support now.

25 He has support from his, I call her his

1 stepmother and from other people. And I learned this
2 morning that during the time when he was a teenager, he
3 would not sleep at home. He would sleep in cars, and he
4 would sleep at friend's homes, and having children of my
5 own, I know how important stability is to a child.

6 I am a pretty stern father. I don't hit my
7 kids, but I am a pretty stern father. And one of the
8 keys is having continuity of two parents at home. He
9 didn't have that, and it is not an excuse. It is the
10 reality.

11 And I think you have to take that into
12 consideration now prior to sentencing him or anybody
13 else.

14 And I would submit on that, your Honor.

15 THE COURT: Thank you, Mr. Navarro.

16 All right. Mr. Rivera, you, I am sure your
17 attorney has told you this, you have an opportunity to
18 address the court on the issue of your sentencing, and I
19 am actually interested to hear from you. So this is your
20 opportunity, sir, if you wish to exercise it.

21 MR. NAVARRO: Your Honor, my client does want to
22 speak to you. You want him there? Okay.

23 THE DEFENDANT: No. I don't really got much to
24 say. I just wanted to apologize to my family, my wife,
25 my kids, and I thank them for all the love and support

1 they give me. And I only hope that you go with the
2 minimum in my recommendation, you know, so I can get out
3 to my kids. And they messed up on my PSR. I never grew
4 up with a dad. You know, but that is pretty much it, you
5 know. I just want to move on and learn from my mistakes.

6 THE COURT: All right. Anything from the
7 government?

8 MS. EL-AMAMY: No, your Honor.

9 THE COURT: All right. Having considered both the
10 sentencing factors enumerated at Title 18, United States
11 Code, Section 3553(a) and the advisory guidelines range
12 of 210 to 262 months, based upon an offense level of 34
13 and a criminal history category of 4, it is ordered that
14 the defendant shall pay to the United States a special
15 assessment of \$600 which is due immediately. Any unpaid
16 balance shall be due during the period of imprisonment at
17 the rate of not less than \$25 per quarter and pursuant to
18 the Bureau of Prisons' Inmate Financial Responsibility
19 Program. All fines are waived as it is found that such a
20 sanction would place an undue burden on the defendant's
21 dependents.

22 Pursuant to the Sentencing Reform Act of 1984,
23 it is the judgment of the court that defendant Carlos
24 Rivera is hereby committed on counts 1, 2, 5, 6, 10 and
25 23 of the indictment to the custody of the Bureau of

1 Prisons to be imprisoned for a term of 236 months. This
2 term consists of 236 months on each of Counts 1, 2, 5, 6
3 and 10 and 57 months on Count 23, all such terms to be
4 served concurrently.

5 Upon release from imprisonment, defendant
6 shall be placed on supervised release for a term of
7 five years. This term consists of five years on each of
8 counts 1, 2, 5, 6 and 10 and three years on Count 23 of
9 the indictment all such terms to run concurrently under
10 the following terms and conditions:

11 One, defendant shall comply with the rules and
12 regulations of the U.S. Probation Office and General
13 Order 05-02.

14 During the period of community supervision,
15 defendant shall pay the special assessment in accordance
16 with this judgment's orders pertaining to such payment.

17 Three, defendant shall refrain from any
18 unlawful use of a controlled substance. Defendant shall
19 submit to one drug test within 15 days of release from
20 imprisonment and at least two periodic drug tests
21 thereafter not to exceed eight tests per month as
22 directed by the probation officer.

23 Four, defendant shall participate in an
24 outpatient substance abuse treatment and counseling
25 program. Defendant shall abstain from illicit drugs and

1 alcohol and abusing prescription medications during the
2 period of supervision.

3 Five, during the course of supervision, the
4 probation officer with the agreement of the defendant and
5 defense counsel may place the defendant in a residential
6 drug treatment program approved by the U.S. Probation
7 Office for treatment of narcotic addiction or drug
8 dependency. Defendant shall reside in the treatment
9 program until discharged by the program director and the
10 probation officer.

11 Six, as directed by the probation officer, the
12 defendant shall pay all or part of the cost of treating
13 his drug dependency to the after-care contractor during
14 the period of community supervision. Defendant shall
15 provide payment and proof of payment as directed by the
16 probation officer.

17 Seven, the court authorizes the probation
18 office to disclose the presentence report to the
19 substance abuse treatment provider to facilitate
20 defendant's treatment for narcotic addiction or drug
21 dependency. Further redisclosure of the presentence
22 report by the treatment provider is prohibited without
23 the consent of this court.

24 Eight, defendant may not associate with anyone
25 known to him to be a Black Angels gang member and others

1 known to him to be participants in the Black Angels gang
2 criminal activities with the exception of his family
3 members. He may not wear, display, use or possess any
4 gang insignia, emblems, badges, buttons, caps, jackets,
5 vests or any other clothing that defendant knows evidence
6 affiliation with the Black Angels gang. And he may not
7 display any signs or gestures that he knows evidence
8 affiliation with the black angels gang.

9 Nine, as directed by the probation officer,
10 defendant shall not be present in any area known to him
11 to be a location where members of the Black Angels gang
12 meet and/or assemble.

13 And, ten, defendant shall cooperate in the
14 collection of a DNA sample from himself.

15 As required by Title 18, United States Code
16 Section 3553(a), the court is required to impose a
17 sentence that is sufficient but not greater than
18 necessary to comply with the purposes set forth at
19 3553(a)(2). The court has considered the nature and
20 circumstances of the offense, the history and
21 characteristics of the defendant. The court has
22 recognized the need for the sentence imposed to reflect
23 the seriousness of the offense, that it should promote
24 respect for the law, it should provide just punishment
25 for the offense, it should afford adequate deterrence to

1 future criminal conduct. It should protect the public
2 from further crimes of the defendant and hopefully
3 provide the defendant with needed educational or
4 vocational training or other correctional treatment in
5 the most effective manner.

6 The court has evaluated the various kinds of
7 sentences available as well as the guidelines sentencing
8 range. The court has also recognized the need to avoid
9 unwarranted sentencing disparities among defendants with
10 similar records who have been found guilty of similar
11 conduct.

12 The court has imposed the mid range sentence
13 in this case to reflect the ever-escalating nature of
14 Mr. Rivera's offenses, his propensity to carry a loaded
15 firearm and the very dangerous nature of the narcotics
16 that he chose to traffic in.

17 The advisory guidelines range has adequately
18 considered the nature of the offenses including the
19 defendant's membership in a criminal enterprise and the
20 nature of the racketeering acts in which he participated.
21 The guidelines have also accounted for the amount of
22 methamphetamine involved, the firearm he possessed as
23 well as his prior criminal history.

24 The offense is serious in light of the
25 defendant's possession of a large amount of

1 methamphetamine for further distribution. Prior to the
2 seizure, he had sold methamphetamine to two codefendants
3 and acquired a firearm. Fortunately, law enforcement was
4 able to intercepts telephone calls that led to the
5 seizures of the methamphetamine and the weapon, and
6 examining his past misconduct and his behavior in the
7 instant matter, it appears that the defendant's criminal
8 conduct is escalating.

9 He has had a prior conviction for carrying a
10 loaded firearm as well as a conviction for felony assault
11 with a deadly weapon in which he pistol whipped the
12 victim. At the time of the offense he was an active
13 member of the Black Angels street gang. Of course, of
14 greater concern, is the fact that he and his long-term
15 girlfriend, codefendant Jessica Medina were maintaining
16 drugs in their residence where their children also lived.

17 Deterrence is an issue in that defendant
18 reoffended after previously serving a state prison term.

19 The defendant's sentence is also considerably
20 higher than many of his codefendants who appear to have
21 played similar roles in the offense and were not leaders
22 within the gang. The defendant chose to go to trial,
23 however. As such, the recommended sentence does not
24 create disparity with those who plead guilty to lesser
25 charges and received reductions for acceptance of

1 responsibility.

2 In mitigation is the defendant's relatively
3 youthful age of 23 at the time of the offense as well as
4 his family circumstances. As previously indicated, by
5 the time he was 18, his father had abandoned the family.
6 Two older brothers had gone away to prison, and his
7 mother and sisters had moved away from their home town of
8 Ontario.

9 It appears that his support network at the
10 time of the offense consisted of Medina, his childhood
11 friend Raul Prieto, Prieto's mother and the gang to which
12 the defendant belonged. Nonetheless, the defendant has
13 had previous opportunities to reform himself, and he has
14 failed to do so. He has not yet completed high school
15 and does not have any stable work history.

16 During his incarceration, he will be able to
17 avail himself to the educational and job training
18 programs. Though he reported that he has never been
19 addicted to controlled substance, he does have a lengthy
20 history of drug use. And he smoked marijuana and drank
21 alcohol excessively at the time of his arrest.

22 Though he has no history of treatment for his
23 substance abuse, it is reported that he is amenable to
24 receiving drug treatment and counseling. Therefore, the
25 court has made the recommendation that he be assessed for

1 suitability for the Bureau of Prisons 500-hour
2 residential drug treatment program.

3 You have the right to appeal your conviction
4 if you believe that your guilt -- correction. You have
5 the right to appeal your conviction and your sentence
6 with few exceptions. Your notice of appeal must be filed
7 within 14 days of judgment being entered.

8 Do you understand that, Mr. Rivera?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If you are unable to afford a
11 transcript of the record in this case, one will be
12 provided at government expense. If you are unable to pay
13 the cost of an appeal or the filing fee, you may apply
14 within 14 days for a waiver.

15 If you do not have an attorney to act on your
16 behalf and if you request it, the clerk of the court will
17 prepare and file a notice of appeal on your behalf.
18 Again, you must make the request within 14 days.

19 The notice of appeal must designate the
20 judgment or order appealed from and the fact that you are
21 appealing to the court of appeals.

22 It should also designate that portion of the
23 proceedings not already on file that you deem necessary
24 for the reporter to include. Also, in its consideration,
25 the court has evaluated the sentencing guidelines as

1 required by Title 18, United States Code, Section
2 3553(a)(4) and finds the calculations of suggested
3 sentence therein for this defendant under the present
4 circumstances to be reasonable.

5 The court therefore sentences the defendant as
6 previously stated. You are remanded to the custody of
7 the United States Marshal for delivery to the Director of
8 the Bureau of Prisons.

9 Anything further from the government?

10 MS. EL-AMAMY: No, your Honor.

11 THE COURT: Mr. Navarro.

12 MR. NAVARRO: Two things, your Honor.

13 THE COURT: Yes, sir.

14 MR. NAVARRO: I believe you indicated earlier that
15 you would recommend placement in Southern California?

16 THE COURT: I have.

17 MR. NAVARRO: And, secondly, your Honor, I
18 received today my client's prescription glasses. Could
19 the court issue an order that I be allowed to give them
20 to him so he could take them back to MDC? He has been
21 getting migraines. He doesn't have glasses. He had them
22 in San Bernardino, but when he was moved, all that was
23 lost, your Honor.

24 THE COURT: All right. Let me look into it.

25 MR. NAVARRO: I have them here with me. They are

1 prescription glasses.

2 THE COURT: Okay. Let me look into it.

3 (Proceedings concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28,
United States Code, the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.

Date: August 2, 2013

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR